IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRIT No. 1371 of 1995

L.Rs. of KASHMIRI LAL
V/S
STATE & ORS.

Mr. VIJAY AGARWAL for Mr. BM AGGARWAL, for the appellant / petitioner

Mr. NS ACHARYA for Mr. BL PUROHIT, for the private respondent

Date of Order : 9.5.2007

HON'BLE SHRI N P GUPTA,J.

ORDER

By this petition, the petitioner seeks to challenge the orders Annexures 5, 9, 11 and 12, and 18 and seeks to grant benefit to the petitioner in accordance with Annexure-13. A further prayer made is that a direction be issued to the respondents to keep the petitioner in possession of Killa No. 2 to 9 and 13 to 15 being the disputed land in Chak 26 PBN.

The matter has long drawn history, and this is second round of litigation in this court, inasmuch as earlier Writ No. 1143/1982 had been filed by the private respondent Chhagan Lal, which was allowed on 11.12.1991, while one round of litigation had been over by way of writ

petition before Delhi High Court, which ultimately culminated into Division Bench L.P.A. 111/79, decided on 26.3.1980, and thereafter various proceedings have been taken, and orders have been passed, and in that background the present writ petition has been filed.

Devoid of unnecessary details, the controversy precisely involved in the matter is, that the land of 26 PBN of Stone No. 31/327 which precisely is the land in question, was originally allotted to Chhagan Lal's father Ram Chandra, and also happened to be subsequently allotted to present petitioner Kashmiri Lal, whereupon the controversy arose, and by the Division Bench of Delhi High Court it was found, that the cancellation of allotment of this land to the petitioner is proper, valid, and was maintained. At the same time the controversy was raised by the petitioner, to the effect, that the petitioner had a verified claim while the private respondent was also a displaced person, and also had a verified claim, having certain specified extent of claim of land. But then by suppressing the fact of allotment of land in Amarpura Rathan, and 34 STG, he obtained allotment of land in question, and thus he happened to be allotted excess land, and on this basis it is contended, that if the excess allotment of land is made, then latest allotment is to be cancelled, and since the allotment of the land in question is the latest one, is required to be cancelled, and

therefore, the land should be maintained with the petitioner. It appears from various orders, in the case, passed in the litigation, that at some point of time the stand of the respondent was, to be not in possession of the land in Amarpura Rathan and 34STG. However, in the order of the Prescribed Authority Commissioner cum Collector, Ganganagar dt. 22.2.1978, it was directed, that the allotment of land in Amarpura Rathan and 34 STG, if made, should be cancelled, and it was directed that Managing Officer should make a complete enquiry, as to whether the land was allotted in these two areas or not, and if it is being enjoyed by Ram Chandra or his L.Rs., the land be taken into possession of the Government, and be allotted to eligible persons. It is thereafter, that the controversy went on, and various orders had been passed, including Annexure-13 and 14, which had been challenged before this Court, vide Writ No. 1143/1982, filed by respondent Chhagan Lal, which was allowed on 11.12.1991, and these orders were set aside on the ground of violation of principles of natural justice, and thereafter, after giving opportunity of hearing the order being Annexure-18 was passed.

However, during course of hearing Mr. Acharya submitted, that in view of the order dt. 22.2.1978, passed by the Prescribed Authority Commissioner cum Collector, Ganganagar, produced in this writ petition as Annexure-7, the allotment of land in Amarpura Rathan and 34 STG does

stand cancelled, and he has no objection, if the possession of that land is resumed to the State Government.

In my view that settles the whole controversy, inasmuch as, if that land is resumed to the State Government, admittedly no land would remain to have been excess allotted to Chhagan Lal. So far the petitioner's allotment of land in question, being stone no. 31/327 in Chak 26 PBN is concerned, that aspect obviously stands concluded by the judgment of Division Bench of Delhi High Court. Therefore, the petitioner cannot be granted any relief, to be given possession of the above land of 26 PBN, cancellation of allotment whereof had been upheld by the Division Bench of Delhi High Court. It may be noticed here that the judgment of the Division Bench of Delhi High Court has been produced in this writ petition as Annex. 5, and is prayed to be quashed, but then realising that, that judgment obviously can not be questioned by way of this writ, the learned counsel for the petitioner categorically gave out to be not pressing that relief.

In this situation, it was then contended by the learned counsel for the petitioner, that the petitioner has verified claim of the land, and in lieu thereof the land of 26 PBN was allotted, which has been cancelled, and the petitioner did not get possession of the land in 26 PBN at Stone No. 31/227 either, and therefore the petitioner's

claim stands, and he is entitled to be allotted the remaining amount of land.

In my view, if the petitioner has not been given possession of the land of Stone No. 31/227, and his claim survives, obviously the petitioner may have and pursue the appropriate remedy, as may be available to him for seeking the allotment of land to that extent.

In view of the above discussion, the writ petition is simply required to be disposed of as above, and is accordingly disposed.

(N P GUPTA),J.

/Sushil/